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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6862

DATE COMPLAINT FILED: 8/19/2014

DATE OF NOTIFICATION: 8/26/2014

DATE AMENDED COMPLAINT FILED:

10/27/2014

DATE OF NOTIFICATION: 10/29/2014

DATE OF LAST RESPONSE: 10/17/2014

DATE ACTIVATED: 3/31/2015

ELECTION CYCLE: 2014

EXPIRATION OF STATUTE OF

LIMITATIONS: 11/8/2018

COMPLAINANT:

Keep Louisiana Working

RESPONDENTS:

Friends of Mary Landrieu and Nancy Marsiglia
in her official capacity as treasurer

Senator Mary Landrieu

MUR: 6874

DATE COMPLAINT FILED: 9/22/2014

DATE OF NOTIFICATION: 9/25/2014

DATE OF LAST RESPONSE: 11/14/2014

DATE ACTIVATED: 3/31/2015

ELECTION CYCLE: 2002-2014

EXPIRATION OF STATUTE OF

LIMITATIONS: Earliest: 2/21/2007¹

Latest: 3/19/2019

COMPLAINANT:

Keep Louisiana Working

¹ The Complaint in MUR 6874 concerns charter flights that Senator Landrieu took between February 21, 2002, and March 19, 2014. Although the flights date back to 2002, the only flights still within the five-year statute of limitations would be those occurring between July 2010 and March 19, 2014. See 28 U.S.C. § 2462.

1 RESPONDENTS: Friends of Mary Landrieu and Nancy Marsiglia in
2 her official capacity as treasurer

3
4 Senator Mary Landrieu

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6 RELEVANT STATUTES 52 U.S.C. § 30101(9)(A)(i)
7 AND REGULATIONS: 52 U.S.C. § 30101(11)
8 52 U.S.C. § 30104(a)
9 11 C.F.R. § 106.3(b)
10 11 C.F.R. § 111.4(d)(2)

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12 INTERNAL REPORTS CHECKED: Disclosure Reports

13
14 FEDERAL AGENCIES CHECKED: None

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16 **I. INTRODUCTION**

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18 MURs 6862 and 6874 involve allegations that former Senator Mary Landrieu
19 ("Landrieu"), a 2014 re-election candidate, and her principal campaign committee, Friends of
20 Mary Landrieu and Nancy Marsiglia in her official capacity as treasurer ("Committee"), violated
21 the Federal Election Campaign Act of 1971, as amended ("Act") and Commission regulations by
22 using official federal government funds to pay for private charter flights Landrieu took to
23 campaign-related events between 2002 and 2014. Respondents argue that there is no violation
24 because the Federal Government is not a "person" under the Act, therefore, their use of
25 Government funds to pay for travel did not result in reportable expenditures. Respondents also
26 assert that they reimbursed the government by making a "donation" to the U.S. Treasury equal to
27 the cost of the air travel.

28 We recommend that the Commission merge the two cases, and, for the reasons stated by
29 Respondents, find no reason to believe that the Respondents failed to report expenditures.
30 Respondents' characterization of their repayment to the Treasury as a "donation," however, is
31 not accurate. We recommend that the Commission exercise its prosecutorial discretion and
32 dismiss the potential reporting violation, but direct it to amend the relevant report.

II. FACTS

Mary Landrieu was a Senator from Louisiana from January 3, 1997, to January 3, 2015, and she ran for re-election during the 2014 election cycle. The Committee was Senator Landrieu's principal campaign committee for the 2014 election cycle.

On July 31, 2014, *USA Today* published an article ("USA Today article") documenting purported instances of U.S. government funds being spent on private charter flights by 24 senators, including Landrieu.² The first complaint (MUR 6862), which focused on a single flight identified in the USA Today Article, alleged that the Committee violated the Act and the Senate Ethics Manual by paying \$3,224.08 with official government funds for a November 8, 2013, private charter flight taken for the sole purpose of transporting Landrieu to a campaign fundraising event, and failing to report the expenditure in its disclosure reports.³ On September 12, 2014, the Committee notified the Senate Ethics Committee of the results of its analysis of Landrieu's use of official funds to pay for campaign-related private charter flights dating back to 2002. In particular, the report ("Travel Report") states that the Committee, on 43 occasions between 2002 and 2014, paid \$33,727.02 for private charter flights for Landrieu's campaign-related travel with official government funds.⁴

² Compl. at 2; *id.* attach. See also <http://www.usatoday.com/story/news/politics/2014/07/31/senators-charter-1million-flights/13379561/>. (According to the article, Landrieu spent \$47,000 in government funds for private charter flights between 2002 and 2014.)

³ Compl. at 2; see also Senate Ethics Manual (2003 Edition) at 146. The Complaint also asserts that the use of federal government funds by Landrieu to further campaign-related activity is a violation of 31 U.S.C. § 1301(a). This charter flight appears to have been included as part of the total \$47,000 referred to in the USA Today article. See <http://www.usatoday.com/story/news/politics/2014/07/31/senators-charter-1million-flights/13379561/> (copy of USA Today article).

⁴ See Travel Report at 1. The Committee explained in the Travel Report that it conducted its review from February 6, 2002 – when the Commission promulgated rules stating that mixed-purpose travel may be paid for using a combination of campaign and allocated funds – to the present. Travel Report at 2. The Complaint in MUR 6874 ("Second Complaint") asserts that despite the Committee's rationale for only going back to 2002, it should be

1 MUR 6874 is based on the Committee's September 14, 2014, notification to the Senate
2 Ethics Committee.⁵ This complaint alleges that the Respondents violated the Act and the Senate
3 Ethics Manual by using official government funds totaling \$33,727.02 to pay for Landrieu's
4 campaign-related charter flights rather than using committee funds to pay for those costs and by
5 failing to report its expenditure of official government funds for that purpose.⁶

6 Landrieu and the Committee, citing two Alternative Dispute Resolution matters, assert
7 that the Complaints do not allege a violation because the Act requires reportable expenditures to
8 be "made by any person" but excludes "the Federal Government or any authority of the Federal
9 Government" from its definition of "person."⁷

10 The Committee's October 2014 Quarterly Report reflects a disbursement to the U.S.
11 Treasury on September 11, 2014 in the amount of \$33,727.02 with the purpose noted as a
12 "Donation."⁸ This disbursement appears to be a repayment of the cost of Landrieu's air travel
13 between 2002 and 2014.

14 III. ANALYSIS

15 The term "expenditure" includes "any purchase, payment, distribution, loan, deposit or
16 gift of money or anything of value, **made by any person** for the purpose of influencing any
17 election for federal office."⁹ However, section 30101(11) expressly defines "person" to exclude

required to examine its travel records dating back to 1998 when Landrieu was first elected to office. MUR 6874 Response ("Second Resp.") at 3.

⁵ Second Compl. at 1.

⁶ The second Complaint also requests that the Commission investigate Landrieu's travel expenses dating back to 1998. Second Compl. at 2.

⁷ Resp. at 2; Second Resp. at 2; *see also* 52 U.S.C. §§ 30101(9)(a)(i) and 30101(11).

⁸ Friends of Mary Landrieu, October 2014 Quarterly Report at 1186 (Oct. 18, 2014).

⁹ 52 U.S.C. § 30109(9)(A)(i) (emphasis added).

1 “the Federal Government or any authority of the Federal Government.”¹⁰ The Act also provides
2 that committees are required to accurately disclose its disbursements in its disclosure reports.¹¹

3 The Committee’s use of official government funds to pay for campaign-related charter
4 flights are governed by a federal appropriations law and subject to Congressional oversight, and
5 there is no provision of the Act or regulations that addresses the use or misuse of official
6 government funds for this purpose.¹² Section 106.3(b) of the Commission regulations provides
7 that “all expenditures for campaign-related travel paid for by a candidate from a campaign
8 account or by his or her authorized committees or by any other political committee shall be
9 reported” but is silent as to the cost of the travel is paid for with funds from a source that is not a
10 “person” under the Act.¹³

11 The use of official federal government funds for campaign-related travel is not a violation
12 under the Act, nor does it result in reportable expenditures. See MUR 6553 (Lugar) Factual and
13 Legal Analysis at 5-6 (concluding that Senator’s trips, which included campaign activity but
14 were paid for with Senate funds, need not be allocated nor reported). The Commission explained
15 that such trips were not paid for by a “person” within the meaning of the Act.¹⁴

16 We similarly conclude that the Respondents did not violate any provision of the Act or
17 regulations by using official government funds to pay for Landrieu’s campaign-related private

¹⁰ *Id.* § 30101(11).

¹¹ *Id.* § 30104(a).

¹² See 31 U.S.C. § 1301(a).

¹³ 11 C.F.R. § 106.3(a).

¹⁴ *Id.* at 5, n. 6. Respondents cite two ADR cases for the proposition that the Government is not a “person” under the act, and the use of official funds for campaign events does not result in reportable contributions or expenditures. See ADR 221/MUR 5490 (Schumer), (candidate’s travel paid for using funds authorized and appropriated by the Federal Government are not paid for by a “person”); ADR 229/MUR 5477 (Van Hollen), (use of Congressional Staff and Government email for campaign purposes).

1 charter flights between 2002 and 2014 and by not reporting those payments as expenditures on
2 their disclosure reports. In addition, it is not within the Commission's jurisdiction to determine
3 potential violations of the statutory provisions of other governmental entities. Therefore, we
4 recommend that the Commission find no reason to believe that the Respondents violated any
5 provision of the Act or regulations by using government funds to pay for campaign-related
6 private charter flights and by not reporting the payments to the Commission.

7 The Committee's October 2014 Quarterly Report shows a disbursement to the U.S.
8 Treasury on September 11, 2014, in the amount of \$33,727.02, the same as the reimbursement
9 amount indicated in the Travel Report.¹⁵ The Committee described this disbursement as a
10 "donation"¹⁶ but this term does not properly describe the repayment to the federal government
11 for campaign travel expenses. Thus, while the Committee reported the repayment, the purpose
12 did not accurately specify the nature of the payment. Accordingly, we recommend that the
13 Commission exercise its prosecutorial discretion and dismiss the potential reporting violation,
14 and require the Committee to amend its October 2014 Quarterly Report to show the repayment
15 as a disgorgement.¹⁷

¹⁵ See Friends of Mary Landrieu, October 2014 Quarterly Report at 1189 (Oct. 18, 2014).

¹⁶ *Id.*

¹⁷ As to Complainant's request that the Commission investigate the Committee's possible use of official government funds for campaign-related private charter flights dating back to 1998, the statute of limitations has expired for any of the payments occurring before July 2010.

IV. RECOMMENDATIONS

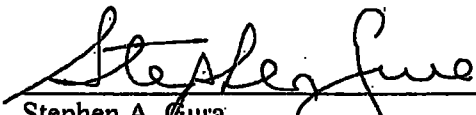
1. Merge MUR 6862 into MUR 6874.
2. Find no reason to believe that the Friends of Mary Landrieu and Nancy Marsiglia in her official capacity as treasurer and Senator Mary Landrieu violated any provision of the Act or regulations in using official government funds to pay for campaign-related private charter flights and by failing to disclose those payments to the Commission.
3. Exercise prosecutorial discretion and dismiss the potential violation that Friends of Mary Landrieu and Nancy Marsiglia in her official capacity as treasurer violated 52 U.S.C. § 30104 by failing to accurately report its repayment of funds to the U.S. Treasury, and require amendment of the October 2014 Quarterly Report.
4. Approve the Factual and Legal Analysis.
5. Approve the appropriate letters.
6. Close the file.

Daniel Petalas
Associate General Counsel for
Enforcement

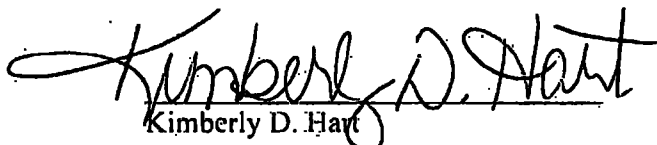
6.26.15

Date

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